(5)

FILED

JAN 8 1985

ALEXANDER L. STEVAS, CLERK

No. 84-438

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION, WALPOLE,

Petitioner,

v.

GERALD HILL AND JOSEPH CRAWFORD,

Respondents.

On Writ of Certiorari to the Massachusetts Supreme Judicial Court

AMICI CURIAE BRIEF OF STATE OF CALIFORNIA ex rel. JOHN K. VAN DE KAMP, ATTORNEY GENERAL and CALIFORNIA DEPARTMENT OF CORRECTIONS; and the STATES OF ALABAMA, ARIZONA, CONNECTICUT, HAWAII, ILLINOIS, INDIANA, KANSAS, KENTUCKY, LOUISIANA, MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, NORTH CAROLINA, OHIO, SOUTH CAROLINA, SOUTH DAKOTA, VERMONT, VIRGINIA, WYOMING IN SUPPORT OF REVERSAL

Attorneys for Amici Curiae State of California ex rel. John K. Van De Kamp Attorney General, and California Department of Corrections

JOHN K. VAN DE KAMP
Attorney General

STEVE WHITE
Chief Assistant Attorney General

ARNOLD OVEROYE
Assistant Attorney General

WILLIAM GEORGE PRAHL
SUSAN J. ORTON
Counsel of Record
Deputy Attorneys General

1515 K Street, Suite 511
Sacramento, California 95814
Telephone: (916) 324-5279

(continued on inside cover)

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

CHARLES A. GRADDIT
Attorney General
State of Alabama

ROBERT K. CORBIN
Attorney General
ANTHONY B. CHING
Solicitor General
State of Arizona

JOSEPH L. LIEBERMAN
Attorney General
CORNELIUS TUOHY
Assistant Attorney General
State of Connecticut

MICHAEL A. LILLY
Attorney General
State of Hawaii

NEIL HARTIGAN
Attorney General
JILL WINE-BANKS
Solicitor General
State of Illinois

LINLEY E. PEARSON
Attorney General
State of Indiana

ROBERT T. STEPHAN
Attorney General
State of Kansas

DAVID ARMSTRONG
Attorney General
Commonwealth of Kentucky

WILLIAM J. GUSTE, JR.
Attorney General
State of Louisiana

FRANK J. KELLEY
Attorney General
LEWIS J. CARUSO
Solicitor General
State of Michigan

HUBERT H. HUMPHREY, III
Attorney General
State of Minnesota

EDWIN LLOYD PITTMAN
Attorney General
ROBERT L. GIBBS
Assistant Attorney General
State of Mississippi

JOHN ASHCROFT
Attorney General
JOHN M. MORRIS
Chief Counsel
Criminal Division
State of Missouri

MIKE GREELY
Attorney General
State of Montana

PAUL DOUGLAS
Attorney General
State of Nebraska

RUFUS L. EDMISTEN
Attorney General
State of North Carolina

ANTHONY J. CELEBREZZE, JR.
Attorney General
State of Ohio

T. TRAVIS MEDLOCK
Attorney General
State of South Carolina

MARK V. MEIERHENRY
Attorney General
State of South Dakota

JOHN EASTON, JR.
Attorney General
State of Vermont

GERALD L. BALILES
Attorney General
Commonwealth of Virginia

A. G. MCCLINTOCK
Attorney General
State of Wyoming

QUESTIONS PRESENTED

1. Is judicial review of prison disciplinary findings compelled by the due process clause of the Fourteenth Amendment?

2. If judicial review of prison disciplinary findings is required, should such findings be reviewed under a standard more stringent than an inquiry as to whether the discipline imposed is arbitrary, capricious, or an abuse of discretion?

TABLE OF CONTENTS

		Page
QUESTIONS PRESENTED		i.
INTEREST OF AMICI		2
SUMMARY OF ARGUMENT		5
ARGUMENTS		
I	STATE PRISONERS' SUBSTANTIVE DUE PROCESS RIGHTS DO NOT REQUIRE JUDICIAL REVIEW OF DISCIPLINARY ACTION FINDINGS, ABSENT A SHOWING THAT POSTDEPRIVATION REMEDIES ARE INADEQUATE	6
II	JUDICIAL REVIEW OF DISCIPLINARY FINDINGS SHOULD BE LIMITED TO ERRORS WHICH ARE SO FLAGRANT OR MANIFEST AS TO CONSTITUTE AN ARBITRARY DEPRIVATION OF THE PRISONER'S LIBERTY INTEREST	14
CONCLUSION		17

TABLE OF AUTHORITIES

	Page
Hudson v. Palmer (1984) ___ U.S. ___ 104 S.Ct. 3194	6, 13
In re Jackson Crim. 24237 hearing granted, 12-13-84	12
In re Spence (1974) 36 Cal.App.3d 636	15
Kush v. Rutledge (1983) 103 S.Ct. 1483	7
Parratt v. Taylor (1981) 451 U.S. 527	6, 7
Rutledge v. Arizona Bd. of Regents (9th Cir. 1981) 660 F.2d 1345	7
Wolf-Lillie v. Sonquist (7th Cir. 1983) 699 F.2d 864	7
Wolff v. McDonnell (1974) 418 U.S. 539	2, 5, 12, 14, 15, 16

STATUTES, CODES AND OTHER AUTHORITIES

Title 15, California Administrative Code

§ 3312(e)(f)	8
§ 3314	7
§ 3315	7
§ 3323	7
§ 3325	8
§ 3328	7

	Page
California Constitution	
Article 6, section 10	12
California Penal Code	
§ 1473 et seq.	12
Illinois Rev. Statute	
Chapter 38, § 1003-3-2(a)(4)	11
Chapter 38, § 1003-6-3	11
Nebraska Rev. Statute	
§ 25-1901 et seq.	11
New Jersey Constitution	
(1947) Article VI, § V, ¶ 4	12
Ohio Administrative Code	
§ 5120-9-09	11
42 United States Code	
§ 1997e(a)(1)	13
United States Supreme Court Rules	
Rule 36.4	2

No. 84-438

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1984

SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION, WALPOLE,

Petitioner,

v.

GERALD HILL AND JOSEPH CRAWFORD,

Respondents.

ON WRIT OF CERTIORARI TO THE
MASSACHUSETTS SUPREME JUDICIAL COURT

AMICI CURIAE BRIEF OF STATE OF CALIFORNIA ex rel. JOHN K. VAN DE KAMP, ATTORNEY GENERAL and CALIFORNIA DEPARTMENT OF CORRECTIONS; and the STATES OF

ALABAMA, ARIZONA, CONNECTICUT, HAWAII, ILLINOIS, INDIANA, KANSAS, KENTUCKY, LOUISIANA, MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, NORTH CAROLINA, OHIO, SOUTH CAROLINA, SOUTH DAKOTA, VERMONT, VIRGINIA, WYOMING

Amici file this brief pursuant to Rule 36.4 of the Rules of the Supreme Court of the United States.

INTEREST OF AMICI

This brief is respectfully submitted in support of petitioner, Superintendent, Massachusetts Correctional Institution, Walpole.

The twenty states which have joined as amici in this case manage state prisons within their respective jurisdictions. Amici are charged with the responsibility of balancing the needs of institutional security against inmates' individual rights.

Amici administer thousands of prison disciplinary hearings and appeals therefrom each year. These hearings are conducted pursuant to the procedural due process requirements established by the Court a decade ago. (Wolff v. McDonnell, 418 U.S. 539 (1974).)

This Court's grant of certiorari on the instant case represents a significant, nationwide potential for an expanded judicial role in reviewing prison disciplinary hearings. Amici wish to impress upon the Court their opposition to such an expansion. Their position, in brief, is that the existing federal and state network of procedures for reviewing prison disciplinary findings works well to assure due process and that further expansion is not necessary.

California's experience is illustrative. California's 42,976 inmates may challenge prison disciplinary actions by administrative appeals within amicus California Department of Corrections and, thereafter, in state habeas corpus actions. If substantive due process rights expand inmates' avenues of appeal directly into federal court on questions of substantive sufficiency of findings, California's

judicial and legal workload will increase exponentially without securing significant gains for inmates.

This situation is by no means unique to California and its Department of Corrections. Other amici joining in this brief have fashioned similar state procedures and litigate state and federal cases concerning state prisoners. The issues in this case are of critical importance to them, and amici therefore respectfully request that their contentions be considered in this case.

- - - - - -

SUMMARY OF ARGUMENT

The Massachusetts decision presented here creates a new substantive due process right to judicial review of prison disciplinary findings, as a "logical extension" of Wolff v. McDonnell.

Amici urge reversal of the Massachusetts decision as an unwarranted addition to existing state and federal frameworks for prison disciplinary actions.

Amici submit that the present structure offers adequate remedies to inmates who challenge disciplinary actions. Given the adequacy of those postdeprivation remedies, the due process clause does not compel judicial review of disciplinary findings. Accordingly, amici urge the Court to reverse the Massachusetts Supreme Judicial Court and halt the spread of new judicial roles of doubtful utility and uneven application.

ARGUMENTS

I

STATE PRISONERS' SUBSTANTIVE DUE PROCESS RIGHTS DO NOT REQUIRE JUDICIAL REVIEW OF DISCIPLINARY ACTION FINDINGS, ABSENT A SHOWING THAT POSTDEPRIVATION REMEDIES ARE INADEQUATE

The appropriate focus for due process analysis here is, in amici's view, the following: whether meaningful state standards and procedures can offer inmates an adequate remedy after liberty interests have been deprived by prison disciplinary actions.

Evaluation of postdeprivation remedies has been a key factor in cases involving prisoners' loss of property, whether intentional or negligent. (Hudson v. Palmer, ___ U.S. ___, 104 S.Ct. 3194 (1984); Parratt v. Taylor, 451 U.S. 527 (1981).) Amici submit that the adequacy of such remedies should be the pivotal factor in evaluating the liberty interest involved in

prison disciplinary actions. (See Rutledge v. Arizona Bd. of Regents, 660 F.2d 1345, 1352 (9th Cir. 1981), aff'd on other grounds sub. nom., Kush v. Rutledge, 103 S.Ct. 1483 (1983).) [1/]

In California, for example, the disciplinary system is designed to ensure uniformity and accountability. Due process guarantees are built into the precise definitions of punishable misconduct and corresponding credit losses. (15 Cal. Admin. Code, §§ 3314-3315, 3323. [2/]) Restoration of lost credit is offered to inmates after "discipline-free" periods. (§ 3328.)

---

1. See also, Wolf-Lillie v. Sonquist, 699 F.2d 864, 871 (7th Cir. 1983) (Parratt "requires federal courts to consider the adequacy and availability of remedies under state law before concluding that a deprivation of life, liberty, or property violates due process of law").

2. All section citations refer to Title 15, California Administrative Code.

A three-level appeal system is also a central feature of the California system for prison discipline. Review of disciplinary actions begins at the institutional level, where both informal and formal appeals may be taken. (§§ 3312(e)(f), 3325.) California's experience has demonstrated that the remedy of institutional review is not a hollow one. In fiscal year 1983-84, for example, First Level or informal appeals from disciplinary actions were taken by 2,446 inmates. Relief or partial relief was granted at this level in 579, or approximately 23 percent, of those appeals. (California Department of Corrections Inmate/Parolee Appeals Quarterly Reports for F.Y. 83-84, First Level.) Second Level appeals from disciplinary actions during that same period totalled 3,175, of which 601 or approximately 18.9 percent were granted or

partially granted. (Id., Second Level Reports.)

As an additional protection, third-level review in California is carried out by a professional appeals unit which is independent of all institutional hierarchies at the prisons. 1,412 appeals were brought to this level in fiscal year 1983-84 for formal reevaluation. After investigation, interviews, and a full review for compliance with all procedural requirements, including the "preponderance of the evidence" standard of proof, appeals were granted or partially granted in 238 cases, approximately 16.8 percent. (Id., Third Level Reports.)

Postdeprivation remedies are thus demonstrably effective in California at the administrative level, where inmates with complaints about disciplinary actions can obtain post-hearing review by institutional

and then statewide appeals units with a record of fairness and objectivity.

The State of Illinois, with approximately 16,000 inmates and 102,636 disciplinary actions in fiscal year 1984, offers another example of a workable system of administrative review. Illinois, like California, has a tri-level structure for review of disciplinary actions in its prisons. After discipline has been imposed, inmates may take grievances to an Institutional Inquiry Board at the prisons.

Further appeals may be taken by personal appearance or statement to the Administrative Review Board, made up of three persons from outside the prison, one of whom must be a public member.

A third level of review is available to Illinois inmates facing a loss of more than 30 days of "good conduct credit" in twelve months. That review is before the

Prisoner Review Board, an independent agency which reports to the Governor. (Ill. Rev. Stats. Ch. 38, § 1003-6-3.) Illinois law requires that appointees to the Prisoner Review Board have at least five years' professional experience in penology or a related area. (Ill. Rev. Stats. Ch. 38, § 1003-3-2(a)(4).) (See also, Ohio Admin. Code, § 5120-9-09 which also has a tri-level system.) To superimpose a new layer of judicial review atop such adequate state-made structures is not required by the due process clause.

Moreover, many states already provide for broad equitable relief from adverse decisions of prison administrators. Petitions in Error or for Writs of Habeas Corpus offer a simple, flexible means for prisoner access to state courts. (See Cal. Pen. Code, § 1473 et seq.; Neb. Rev. Stat.

§ 25-1901 et seq. (Reissue 1979); N.J. Const. (1947) art. VI, § V, ¶ 4.)

In California, the inmate has potential recourse to all three judicial levels, since original jurisdiction is conferred in the Supreme Court and the Court of Appeal, as well as the Superior Court, for issuance of writs of habeas corpus. (Cal. Const., art. 6, § 10.)

For example, the California Supreme Court now has pending a state prisoner's habeas corpus action concerning the in camera qualification of a confidential informant to a prison disciplinary action. (In re Jackson, Crim. 24237, hg. granted, Dec. 13, 1984.) The matter had previously been heard in the trial court and was then the subject of a published Court of Appeal decision.

In summary, judicial review of prison disciplinary actions should not be required as an extension of Wolff v.

McDonnell, supra, because state-created reviews can provide adequate postdeprivation remedies. 3/

- - - - - -

---

3. While amici do not urge exhaustion, as such, as a bar to such review, the discretion to impose such a requirement, as a 90-day stay of federal actions, is already authorized by 42 United States Code section 1997e(a)(1). (See, also, Justice O'Connor's concurring opinion in Hudson v. Palmer, supra, at p. 3207.)

II

JUDICIAL REVIEW OF DISCIPLINARY FINDINGS SHOULD BE LIMITED TO ERRORS WHICH ARE SO FLAGRANT OR MANIFEST AS TO CONSTITUTE AN ARBITRARY DEPRIVATION OF THE PRISONER'S LIBERTY INTEREST

If the Court extends Wolff v. McDonnell to require judicial review of disciplinary findings, amici support Petitioner's argument that disciplinary actions should be reviewed only for fundamental procedural defects, flagrant or manifest error, or unjustified disregard of the evidence before the disciplinary board. Amici submit that a more stringent national standard will hamper prison administrators without adding significant protections for inmates.

In Wolff v. McDonnell, the Court noted that the dynamics of fact-finding in prison discipline cases are unlike those of

an open society. (Wolff v. McDonnell, supra, 418 U.S. at pp. 558-572.) In a prison disciplinary setting, immediate concerns for survival are paramount. Motives and ulterior motives for cooperation or non-cooperation cross-mingle in an atmosphere of tension and self-preservation. Prison officials responsible for punishing misconduct are faced with razor-thin judgment calls which must insure the safety of inmates and staff. In this environment, fact-finding must be fair at a very fundamental level, or the basic goal of maintaining prison calm is lost, among others. The standard urged by petitioner will, amici submit, ensure such fairness. As noted in Wolff, "the touchstone of due process is protection of the individual against arbitrary action of government." (Wolff v. McDonnell, supra, 418 U.S. at p. 558; see also In Re Spence, 36 Cal.App.3d 636, 639-640 (1974).) Accordingly,

amici urge the Court to adopt petitioner's standard if the Court does find judicial review required as a corollary to Wolff.

- - - - - -

CONCLUSION

For the foregoing reasons, amici respectfully submit that the decision of the Massachusetts Supreme Judicial Court presented here should be reversed.

DATED: December 28, 1984

JOHN K. VAN DE KAMP
Attorney General
STEVE WHITE, Chief
Assistant Attorney General
ARNOLD OVEROYE
Assistant Attorney General
WILLIAM GEORGE PRAHL
Supervising Deputy Attorney General

SUSAN J. ORTON
Counsel of Record
Deputies Attorney General

Attorneys for Amici Curiae
State of California ex. rel.
John K. Van De Kamp, Attorney
General, and California
Department of Corrections

Charles A. Graddit
Attorney General
State of Alabama

Joseph L. Lieberman
Attorney General
Cornelius Tuohy
Assistant Attorney General
State of Connecticut

Michael A. Lilly
Attorney General
State of Hawaii

Neil Hartigan
Attorney General
Jill Wine-Banks
Solicitor General
State of Illinois

Linley E. Pearson
Attorney General
State of Indiana

Robert T. Stephan
Attorney General
State of Kansas

David Armstrong
Attorney General
Commonwealth of Kentucky

William J. Guste, Jr.
Attorney General
State of Louisiana

Hubert H. Humphrey, III
Attorney General
State of Minnesota

Edwin Lloyd Pittman
Attorney General
Robert L. Gibbs
Assistant Attorney General
State of Mississippi

John Ashcroft
Attorney General
John M. Morris
Chief Counsel
Criminal Division
State of Missouri

Mike Greely
Attorney General
State of Montana

Paul Douglas
Attorney General
State of Nebraska

Rufus L. Edmisten
Attorney General
State of North Carolina

Anthony J. Celebrezze, Jr.
Attorney General
State of Ohio

T. Travis Medlock
Attorney General
State of South Carolina

Mark V. Meierhenry
Attorney General
State of South Dakota

John Easton, Jr.
Attorney General
State of Vermont

A. G. McClintock
Attorney General
State of Wyoming

ROBERT K. CORBIN
Attorney General
ANTHONY B. CHING
Solicitor General
State of Arizona

FRANK J. KELLEY
Attorney General
LEWIS J. CARUSO
Solicitor General
State of Michigan

GERALD L. BALILES
Attorney General
Commonwealth of Virginia